

FIRST REGULAR SESSION

SENATE BILL NO. 61

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

0473S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 43.504, 43.507, 488.650, and 610.140, RSMo, and to enact in lieu thereof four new sections relating to expungement of records.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 43.504, 43.507, 488.650, and 610.140, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 43.504, 43.507, 488.650, and 610.140, to read as follows:

43.504. Notwithstanding section 610.120, the sheriff of any county, the sheriff of the City of St. Louis, and the judges of the circuit courts of this state may make available, for review, information obtained from the central repository to private entities responsible for probation supervision pursuant to sections 559.600 to 559.615, **as well as to expungement clinics or legal aid organizations for the purposes of pursuing relief under section 610.140.** When the term of probation is completed or when the material is no longer needed for purposes related to the probation **or expungement,** it shall be returned to the court or destroyed. Criminal history information obtained from the central repository may be made available to private entities responsible for providing services associated with drug treatment courts under sections 478.001 to 478.008 **and to expungement clinics or legal aid organizations for the purposes of pursuing relief under section 610.140.** The

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 private entities shall not use or make this information
19 available to any other person for any other purpose.

43.507. **1.** All criminal history information, in the
2 possession or control of the central repository, except
3 criminal intelligence and investigative information, may be
4 made available to qualified persons and organizations for
5 research, evaluative and statistical purposes under written
6 agreements reasonably designed to ensure the security and
7 confidentiality of the information and the protection of the
8 privacy interests of the individuals who are subjects of the
9 criminal history.

10 **2. Pro-bono clinics and legal aid organizations which**
11 **seek to expunge the records of petitioners at no-charge,**
12 **pursuant to the provisions of section 610.140, shall have**
13 **access to all criminal history information in the possession**
14 **or control of the central repository, except criminal**
15 **intelligence and investigation, for each petitioner who has**
16 **executed a written agreement with said clinic or**
17 **organization. In these cases, pro-bono clinics and legal**
18 **aid organizations shall not be subject to the provisions of**
19 **subsection 3 of this section.**

20 **3. Prior to such information being made available,**
21 **information that uniquely identifies the individual shall be**
22 **deleted. Organizations receiving such criminal history**
23 **information shall not reestablish the identity of the**
24 **individual and associate it with the criminal history**
25 **information being provided.**

488.650. There shall be assessed as costs a surcharge
2 in the amount of [two hundred fifty] **one hundred** dollars on
3 all petitions for expungement filed under the provisions of
4 section 610.140. [The] **In their complete discretion, a**
5 judge may waive the surcharge if the petitioner is found by

6 the judge to be indigent [and] **or** unable to pay the costs.
7 Such surcharge shall be collected and disbursed by the clerk
8 of the court as provided by sections 488.010 to 488.020.
9 Moneys collected from this surcharge shall be payable to the
10 general revenue fund.

610.140. 1. **For the purposes of this section, the
2 following terms mean:**

3 (1) **"Court", any Missouri municipal, associate
4 circuit, or circuit court;**

5 (2) **"Offense", any offense, violation, or infraction
6 of Missouri state, county, municipal, or administrative law;**

7 (3) **"Prosecutor" or "prosecuting attorney", the
8 prosecuting attorney, circuit attorney, or municipal
9 prosecuting attorney;**

10 (4) **"Same course of criminal conduct", offenses,
11 violations, or infractions which:**

12 (a) **Arose under the same criminal statute;**

13 (b) **Involve conduct that is the substantial equivalent
14 of any offense, violation, or infraction sought to be
15 expunged; or**

16 (c) **Occur within a time period suggesting a common
17 connection between the offenses, not to exceed one year.**

18 2. Notwithstanding any other provision of law and
19 subject to the provisions of this section, any person may
20 apply to any court in which such person was charged or found
21 guilty of any offenses[, violations, or infractions] for an
22 order to expunge records of such arrest, plea, trial, or
23 conviction.

24 (1) Subject to the limitations of subsection [12] **13**
25 of this section, a person may apply to have one or more
26 offenses[, violations, or infractions] expunged if such
27 offense[, violation, or infraction] occurred within the

28 state of Missouri and was prosecuted under the jurisdiction
29 of a Missouri [municipal, associate circuit, or circuit]
30 court, so long as such person lists all the offenses[,
31 violations, and infractions] he or she is seeking to have
32 expunged in the petition and so long as all such offenses[,
33 violations, and infractions] are not excluded under
34 subsection [2] 3 of this section.

35 (2) If the offenses[, violations, or infractions] were
36 charged as counts in the same indictment or information or
37 were committed as part of the same course of criminal
38 conduct, the person may include all the related offenses[,
39 violations, and infractions] in the petition, regardless of
40 the limits of subsection [12] 13 of this section, and the
41 petition shall only count as a petition for expungement of
42 the highest level violation or offense contained in the
43 petition for the purpose of determining future eligibility
44 for expungement.

45 [2.] 3. The following offenses[, violations, and
46 infractions] shall not be eligible for expungement under
47 this section:

- 48 (1) Any class A felony offense;
- 49 (2) Any dangerous felony as that term is defined in
50 section 556.061;
- 51 (3) Any offense that requires registration as a sex
52 offender;
- 53 (4) Any felony offense where death is an element of
54 the offense;
- 55 (5) Any felony offense of assault; misdemeanor or
56 felony offense of domestic assault; or felony offense of
57 kidnapping;
- 58 (6) Any offense listed, or previously listed, in
59 chapter 566 or section 105.454, 105.478, 115.631, 130.028,

60 188.030, 188.080, 191.677, 194.425, [217.360,] 217.385,
61 334.245, 375.991, 389.653, 455.085, 455.538, 557.035,
62 [565.084, 565.085, 565.086, 565.095,] 565.120, 565.130,
63 565.156, [565.200, 565.214,] 566.093, 566.111, 566.115,
64 **566.116**, 568.020, 568.030, 568.032, 568.045, 568.060,
65 568.065, [568.080, 568.090,] 568.175, [569.030, 569.035,]
66 569.040, 569.050, 569.055, 569.060, 569.065, 569.067,
67 569.072, 569.160, 570.025, [570.090, 570.180,] 570.223,
68 570.224, [570.310,] 571.020, 571.060, 571.063, 571.070,
69 571.072, 571.150, **573.200**, **573.205**, 574.070, 574.105,
70 574.115, 574.120, 574.130, **574.140**, 575.040, 575.095,
71 575.153, 575.155, 575.157, 575.159, 575.195, 575.200,
72 575.210, 575.220, 575.230, 575.240, [575.350,] 575.353,
73 577.078, 577.703, 577.706, [578.008, 578.305, 578.310,] or
74 632.520;

75 (7) Any offense eligible for expungement under section
76 [577.054 or] 610.130;

77 (8) Any intoxication-related traffic or boating
78 offense as defined in section 577.001, or any offense of
79 operating an aircraft with an excessive blood alcohol
80 content or while in an intoxicated condition;

81 (9) Any ordinance violation that is the substantial
82 equivalent of any offense that is not eligible for
83 expungement under this section;

84 (10) Any violation of any state law or county or
85 municipal ordinance regulating the operation of motor
86 vehicles when committed by an individual who has been issued
87 a commercial driver's license or is required to possess a
88 commercial driver's license issued by this state or any
89 other state; and

90 (11) Any **felony** offense of section 571.030, except any
91 offense under subdivision (1) of subsection 1 of section

92 571.030 where the person was convicted or found guilty prior
93 to January 1, 2017.

94 [3.] 4. The petition shall name as defendants all law
95 enforcement agencies, courts, prosecuting or circuit
96 attorneys, municipal prosecuting attorneys, central state
97 repositories of criminal records, or others who the
98 petitioner has reason to believe may possess the records
99 subject to expungement for each of the offenses, violations,
100 and infractions listed in the petition. The court's order
101 of expungement shall not affect any person or entity not
102 named as a defendant in the action.

103 [4.] 5. The petition shall include the following
104 information:

105 (1) The petitioner's:

106 (a) Full name;

107 (b) Sex;

108 (c) Race;

109 (d) Driver's license number, if applicable; and

110 (e) Current address;

111 (2) Each offense, violation, or infraction for which
112 the petitioner is requesting expungement;

113 (3) The approximate date the petitioner was charged
114 for each offense, violation, or infraction; and

115 (4) The name of the county where the petitioner was
116 charged for each offense, violation, or infraction and if
117 any of the offenses, violations, or infractions occurred in
118 a municipality, the name of the municipality for each
119 offense, violation, or infraction; and

120 (5) The case number and name of the court for each
121 offense.

122 [5.] 6. The clerk of the court shall give notice of
123 the filing of the petition to the office of the prosecuting

124 attorney, circuit attorney, or municipal prosecuting
125 attorney that prosecuted the offenses[, violations, or
126 infractions] listed in the petition. If the prosecuting
127 attorney, circuit attorney, or municipal prosecuting
128 attorney objects to the petition for expungement, he or she
129 shall do so in writing within thirty days after receipt of
130 service. Unless otherwise agreed upon by the parties, the
131 court shall hold a hearing within sixty days after any
132 written objection is filed, giving reasonable notice of the
133 hearing to the petitioner. If no objection has been filed
134 within thirty days after receipt of service, the court may
135 set a hearing on the matter and shall give reasonable notice
136 of the hearing to each entity named in the petition. At any
137 hearing, the court may accept evidence and hear testimony
138 on, and may consider, the following criteria for each of the
139 offenses[, violations, or infractions] listed in the
140 petition for expungement:

141 (1) At the time the petition is filed, it has been at
142 least [seven] **three** years if the offense is a felony, or at
143 least [three years] **one year** if the offense is a
144 misdemeanor, municipal offense, or infraction, from the date
145 the petitioner completed any authorized disposition imposed
146 under section 557.011 for each offense, violation, or
147 infraction listed in the petition;

148 (2) **At the time the petition is filed**, the person has
149 not been found guilty of any other misdemeanor or felony,
150 not including violations of the traffic regulations provided
151 under chapters **301, 302, 303, 304**, and 307, during the time
152 period specified for the underlying offense, violation, or
153 infraction in subdivision (1) of this subsection;

154 (3) The person has satisfied all obligations relating
155 to any such disposition, including the payment of any fines
156 or restitution;

157 (4) The person does not have charges pending;

158 (5) The petitioner's habits and conduct demonstrate
159 that the petitioner is not a threat to the public safety of
160 the state; and

161 (6) The expungement is consistent with the public
162 welfare and the interests of justice warrant the expungement.

163 A pleading by the petitioner that such petitioner meets the
164 requirements of subdivisions (5) and (6) of this subsection
165 shall create a rebuttable presumption that the expungement
166 is warranted so long as the criteria contained in
167 subdivisions (1) to (4) of this subsection are otherwise
168 satisfied. The burden shall shift to the prosecuting
169 attorney, circuit attorney, or municipal prosecuting
170 attorney to rebut the presumption. A victim of an offense[,
171 violation, or infraction] listed in the petition shall have
172 an opportunity to be heard at any hearing held under this
173 section[, and the court may make a determination based
174 solely on such victim's testimony].

175 [6.] 7. A petition to expunge records related to an
176 arrest for an eligible offense[, violation, or infraction]
177 may be made in accordance with the provisions of this
178 section to a court of competent jurisdiction in the county
179 where the petitioner was arrested no earlier than [three
180 years] **eighteen months** from the date of arrest; provided
181 that, during such time, the petitioner has not been charged
182 and the petitioner has not been found guilty of any
183 misdemeanor or felony offense. **Commencing on January 1,**
184 **2022, before the central repository for criminal history**

185 information releases a record to an individual or
186 noncriminal justice agency, it shall extract from the record
187 all notations of arrests, indictments, or other information
188 relating to the initiation of criminal proceedings where:

- 189 (1) Three years have elapsed from the date of arrest;
190 (2) No disposition is indicated in the record; and
191 (3) Nothing in the record indicates that proceedings
192 seeking conviction remain pending.

193 [7.] 8. If the court determines that such person meets
194 all the criteria set forth in subsection [5] 6 of this
195 section for each of the offenses[, violations, or
196 infractions] listed in the petition for expungement, the
197 court shall enter an order of expungement. In all cases
198 under this section, the court shall issue an order of
199 expungement or dismissal within six months of the filing of
200 the petition. A copy of the order of expungement shall be
201 provided to the petitioner and each entity possessing
202 records subject to the order, and, upon receipt of the
203 order, each entity shall close any record in its possession
204 relating to any offense, violation, or infraction listed in
205 the petition, in the manner established by section 610.120.
206 The records and files maintained in any administrative or
207 court proceeding in a [municipal, associate, or circuit]
208 court for any offense[, infraction, or violation] ordered
209 expunged under this section shall be confidential and only
210 available to the parties or by order of the court for good
211 cause shown. The central repository shall request the
212 Federal Bureau of Investigation to expunge the records from
213 its files.

214 [8.] 9. The order shall not limit any of the
215 petitioner's rights that were restricted as a collateral
216 consequence of such person's criminal record, and such

217 rights shall be restored upon issuance of the order of
218 expungement. Except as otherwise provided under this
219 section, the effect of such order shall be to restore such
220 person to the status he or she occupied prior to such
221 arrests, pleas, trials, or convictions as if such events had
222 never taken place. No person as to whom such order has been
223 entered shall be held thereafter under any provision of law
224 to be guilty of perjury or otherwise giving a false
225 statement by reason of his or her failure to recite or
226 acknowledge such arrests, pleas, trials, convictions, or
227 expungement in response to an inquiry made of him or her and
228 no such inquiry shall be made for information relating to an
229 expungement, except the petitioner shall disclose the
230 expunged offense[, violation, or infraction] to any court
231 when asked or upon being charged with any subsequent
232 offense, violation, or infraction. The expunged offense[,
233 violation, or infraction] may be considered a prior offense
234 in determining a sentence to be imposed for any subsequent
235 offense that the person is found guilty of committing.

236 [9.] 10. Notwithstanding the provisions of subsection
237 [8] 9 of this section to the contrary, a person granted an
238 expungement shall disclose any expunged offense[, violation,
239 or infraction] when the disclosure of such information is
240 necessary to complete any application for:

241 (1) A license, certificate, or permit issued by this
242 state to practice such individual's profession;

243 (2) Any license issued under chapter 313 or permit
244 issued under chapter 571;

245 (3) Paid or unpaid employment with an entity licensed
246 under chapter 313, any state-operated lottery, or any
247 emergency services provider, including any law enforcement
248 agency;

249 (4) Employment with any federally insured bank or
250 savings institution or credit union or an affiliate of such
251 institution or credit union for the purposes of compliance
252 with 12 U.S.C. Section 1829 and 12 U.S.C. Section 1785;

253 (5) Employment with any entity engaged in the business
254 of insurance or any insurer for the purpose of complying
255 with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or
256 other similar law which requires an employer engaged in the
257 business of insurance to exclude applicants with certain
258 criminal convictions from employment; or

259 (6) Employment with any employer that is required to
260 exclude applicants with certain criminal convictions from
261 employment due to federal or state law, including
262 corresponding rules and regulations.

263 An employer shall notify an applicant of the requirements
264 under subdivisions (4) to (6) of this subsection.

265 Notwithstanding any provision of law to the contrary, an
266 expunged offense, violation, or infraction shall not be
267 grounds for automatic disqualification of an applicant, but
268 may be a factor for denying employment, or a professional
269 license, certificate, or permit; except that, an offense,
270 violation, or infraction expunged under the provisions of
271 this section may be grounds for automatic disqualification
272 if the application is for employment under subdivisions (4)
273 to (6) of this subsection.

274 [10.] 11. A person who has been granted an expungement
275 of records pertaining to a misdemeanor or felony offense, an
276 ordinance violation, or an infraction may answer "no" to an
277 employer's inquiry into whether the person has ever been
278 **arrested, charged, or** convicted of a crime if, after the
279 granting of the expungement, the person has no public record

280 of a misdemeanor or felony offense, an ordinance violation,
281 or an infraction. The person, however, shall answer such an
282 inquiry affirmatively and disclose his or her criminal
283 convictions, including any offense or violation expunged
284 under this section or similar law, if the employer is
285 required to exclude applicants with certain criminal
286 convictions from employment due to federal or state law,
287 including corresponding rules and regulations.

288 [11.] 12. If the court determines that the petitioner
289 has not met the criteria for any of the offenses[,
290 violations, or infractions] listed in the petition for
291 expungement or the petitioner has knowingly provided false
292 information in the petition, the court shall enter an order
293 dismissing the petition. Any person whose petition for
294 expungement has been dismissed by the court for failure to
295 meet the criteria set forth in subsection [5] 6 of this
296 section may not refile another petition until a year has
297 passed since the date of filing for the previous petition.

298 [12.] 13. A person may be granted more than one
299 expungement under this section [provided that during his or
300 her lifetime, the total number of offenses, violations, or
301 infractions for which orders of expungement are granted to
302 the person shall not exceed the following limits:

303 (1) Not more than two misdemeanor offenses or
304 ordinance violations that have an authorized term of
305 imprisonment; and

306 (2) Not more than one felony offense] **for any number**
307 **of felony or misdemeanor offenses or ordinance violations.**

308 A person may be granted expungement under this section for
309 any number of infractions. [Nothing in this section shall
310 prevent the court from maintaining records to ensure that an
311 individual has not exceeded the limitations of this

312 subsection.] Nothing in this section shall be construed to
313 limit or impair in any way the subsequent use of any record
314 expunged under this section of any arrests or findings of
315 guilt by a law enforcement agency, criminal justice agency,
316 prosecuting attorney, circuit attorney, or municipal
317 prosecuting attorney, including its use as a prior offense,
318 violation, or infraction.

319 [13.] 14. The court shall make available a form for
320 pro se petitioners seeking expungement, which shall include
321 the following statement: "I declare under penalty of
322 perjury that the statements made herein are true and correct
323 to the best of my knowledge, information, and belief."

324 [14.] 15. Nothing in this section shall be construed
325 to limit or restrict the availability of expungement to any
326 person under any other law.

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